

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 07-60

A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING AN EMPLOYMENT
AREEMENT WITH MICHAEL J. O'BRIEN, MUNICIPAL COURT JUDGE

WHEREAS, Section 10 of the Tigard City Charter provides for the office of Municipal Judge and
Section 21 establishes the judge as an officer of the City; and

WHEREAS, Michael O'Brien served as a Municipal Court Pro-tem Judge from October 23, 1989 to
June 30, 1992 and has served as Municipal Judge since July 1, 1992; and

WHEREAS, the Tigard City Council has found Judge O'Brien's performance to be satisfactory; and


WHEREAS, the new agreement changes the Judge's employment status from independent contractor
to employee as directed by Internal Review Service.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: An employment agreement is entered into by mutual agreement of the parties as set
forth in the attached Exhibit "A." This agreement will take effect September 25, 2007,
and shall repeal and replace all prior verbal and written agreements.

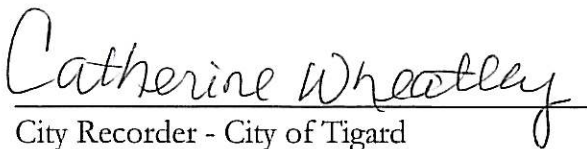
SECTION 2: This resolution is effective immediately upon passage.

PASSED: This 25th day of September 2007.

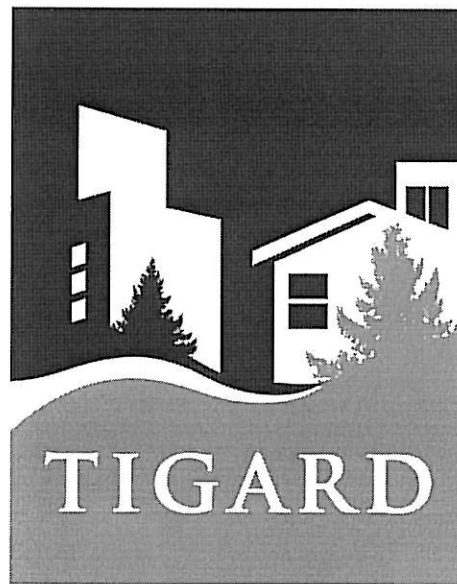


Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard



**CITY OF TIGARD EMPLOYMENT
AGREEMENT**

CITY OF TIGARD EMPLOYMENT AGREEMENT

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City of Tigard Employment Agreement

Introduction

This Agreement, made and entered into this 25th day of September by and between the City of Tigard, Oregon, a municipal corporation, (hereinafter called "City") and Michael J. O'Brien, (hereinafter called "Employee"), both of whom agree as follows:

Section 1: Term

- A. The term of this Agreement shall be for two years, commencing on September 25, 2007. This Agreement shall automatically be renewed on the Anniversary Date for a one year term unless notice that the Agreement shall terminate is given at least 60 calendar days before the Anniversary Date.
- B. The Anniversary Date of this Agreement shall be September 25, 2008 and annually thereafter.

Section 2: Employment, Duties, and Authority

The City agrees to employ Employee as Municipal Court Judge to perform the functions and duties of that position. The authority of Employee, consistent with State law, City Charter or ordinance, shall include, but not be limited to the following:

- Preside over arraignments, trials, and hearings for the following case types: civil infractions, criminal cases, juvenile violations, traffic violations, tow hearings and parking citations;
- Oversee the Municipal Court judicial function;
- Update court orders and rules as needed;
- Provide an annual report to City Council;
- Research and additional projects as agreed to by the Municipal Court Judge and Administrative Services Manager.

Section 3: Compensation

- A. Base Salary: The City agrees to pay the Employee an annual salary of \$45,000 for approximately 525 hours of work, in installments at the same time and in the same manner that the other employees of the City are paid.
- B. At any time during this agreement, if the court's caseload changes significantly, and results in a substantial change in the Employee's hours, both parties agree to negotiate an appropriate adjustment in the Employee's compensation.

Section 4: Hours of Work

The hours in which court are held is set by Order. If court will be held outside of the pre-determined hours it will be with the consent of the Employee or a pro tem judge will be assigned. The City recognizes the Employee will be working hours, outside of those indicated in the Order, on administrative functions and special projects.

Section 5: Performance Evaluation

The City Council may conduct performance evaluations of the Employee as they deem appropriate.

Section 6: Vacation Leave

To allow the Employee the opportunity to schedule vacation during a fiscal year, the City will compensate a pro tem judge for up to 16 hours of service to preside over court. The time does not accrue from fiscal year-to-fiscal year.

Section 7: Professional License and Professional Development

- A. The Employee is required to maintain a current license with the Oregon State Bar and be a member in good standing. If Employee does not maintain his license or is not in good standing his employment may be terminated without 60 days notice.
- B. The City encourages the professional growth and development of the Employee and encourages participation in seminars and conferences related to his duties as Municipal Court Judge. The City agrees to pay for associated expenses to the extent that the expenses are reasonable and necessary, as determined by the City, subject to availability of funds and as approved in the City's annual budget.

Section 8: Termination

As provided by Section 2.16.020 of the Tigard Municipal Code, removal of the Municipal Court Judge by the Mayor shall require the prior consent of a majority of the full Council recorded at a public meeting. Cause shall not be required for removal of the Municipal Court Judge.

Section 9: Resignation

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, subject only to the provisions set forth in this Agreement. In the event that the Employee voluntarily resigns his position with the City, the Employee shall provide a minimum of 60 days notice in order to resign in good standing with the City, unless the parties agree otherwise.

Section 10: Indemnification

To the full extent permitted by law, the Employer shall defend, save harmless and indemnify the Employee against any tort, administrative proceeding or action, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the course and scope of the Employee's duties as Municipal Court Judge unless the act or omission involved gross negligence or willful or wanton conduct under which circumstance the Employee shall be responsible for any and all damages, costs and fees caused by the misconduct or gross negligence himself. The Employee's actions within the course and scope of his employment shall be indemnified by the City until the statute of limitations has expired without regard to his continued employment with the City.

Legal representation, provided by the Employer for the Employee, shall extend until a final determination of the legal action including any appeals brought by Employer or other party. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

The Employee recognizes that the Employer shall have the right to compromise or settle any claim, suit, proceeding or action.

Section 11: Other Employment

The Employee may accept other employment, including assignment as a pro-tem judge other courts, provided that such employment does not interfere with his duties as Municipal Court Judge as set forth herein.

Section 12: Other Terms and Conditions of Employment

The City may fix such other terms and conditions of employment relating to the performance of the Employee, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Tigard Charter or any other law.

Section 13: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) CITY: Craig Prosser, City Manager
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97223
- (2) EMPLOYEE Michael J. O'Brien
PO Box 711
Forest Grove, OR 97116

Alternatively, notice required pursuant to this Agreement may be personally delivered.

Section 14: General Provisions

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. **Binding Effect.** This Agreement shall be binding on the City and the Employee.
- C. **Effective Date.** This Agreement shall become effective on September 25, 2007.
- D. **Severability.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
- E. **Attorneys Fees.** In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the court may adjudge reasonable as attorney's fees and court costs prior to settlement, at trial, or upon appeal of such suit or action.
- F. **Modification or Amendments.** No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by the Mayor and the Employee.
- G. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' rights to enforce the provision or provisions, nor shall any waiver of any breach of any provision or provisions be a waiver of any succeeding breach of the provision itself or any other provision.

Craig Dirksen, Mayor

Michael J. O'Brien

Date

Date